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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,515	10/27/2003	Daniel Howard Lann	Lann01	2676

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EXAMINER

BALSIS, SHAY L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,515

Applicant(s)

LANN, DANIEL HOWARD

Examiner

Shay L. Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 12-15 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Losenno (USPN 4159773).

Losenno teaches a clip device comprising a plurality of substantially cylindrical clip members (30) having a longitudinal opening. The clip members have a hollow interior. There is a rigid main body (32), which the clip members are attached to. The clip members are securely attached to the main body in a parallel manner and are spaced apart from each other in a transverse direction (claim 1). There is an elongated handle (36) attached to the main body (claims 2). The handle is considered to be detachable since the parts are not integral. Therefore, the handle could be broke off or removed by any means such as force (claim 3). The main body is made of a metal plate (col. 2, lines 37-46) (claim 4). The clip members are welded to the main body (col. 2, lines 37-46) (claim 7).

While the reference does not teach using these clips to clean grill rods, the applicant never positively claims the grill rods. Additionally, the clip members used in Losenno could be used to ^{clean}~~large~~ grill rods. The use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Art Unit: 1744

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartleman (USPN 2615577).

Bartleman teaches a clip device comprising a plurality of substantially cylindrical clip members (A) having a longitudinal opening (claim 1). The clip members have a hollow interior. There is a rigid main body (5), which the clip members are attached to (claim 1). The clip members are securely attached to the main body in a parallel manner and are spaced apart from each other in a transverse direction (claim 1). The clip members are adjustably secured to the main body (figure 3) (claim 8).

While the reference does not teach using these clips to clean grill rods, the applicant never positively claims the grill rods. Additionally, the clip members used in Bartleman could be used to ~~large~~^{clean} grill rods. The use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams (USPN 4209098) in view of Bisping et al. (USPN 4119285).

Adams teaches a clip device comprising a plurality of substantially cylindrical clip members (42) having a longitudinal opening (claims 1 and 10). The clip members have a hollow interior (claims 1 and 10). There is a rigid main body (100), which the clip members are attached to (claims 1 and 10). The clip members are securely attached to the main body in a parallel manner and are spaced apart from each other

Art Unit: 1744

in a transverse direction (claim 1). The main body is made of a metal plate (col. 3, lines 12-15) (claim 4). The clip members are adjustably secured to the main body (figure 1) (claim 8). There is a slot (40) located in the main body for receiving the clip members (claim 10). Additionally, there are set screws (62) used to secure the clip members to the main body (claim 10).

Adams teaches all the essential elements of the claimed invention however fails to teach that the clip members have thin and elastically deflectable metal walls. Bisping teaches a clip member made from a thin and elastically deflectable metal wall. It would have been obvious to modify Adams clip members with the clip members as taught by Bisping so as to allow for easy snap-on clipping with a more favorable distribution of the bearing or gripping pressure (col. 2, lines 1-15). Additionally, using clips as taught by Bisping allows various sized rods to fit within the clip. The clip of Adams only allows for one size rod.

Claims 10, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Losenno (USPN 4159773) in view of Kendrena (USPN 5687856).

Losenno teaches all the essential elements of the claimed invention as stated above however fails to teach attaching the clips to the main body with screws. Kendrena teaches using screws to attach hooks and clip members to a main body. It would have been obvious to modify Losenno's permanent clips with adjustable clips as taught by Kendrena so that the spacing between the clips can be altered depending on the use of the clip members (abstract). Therefore, if the clip members of Losenno were attached by screws instead of spot-welding, the clips could be moved or adjusted to facilitate more uses.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartleman or Losenno or Adams in view of Bisping.

Bartleman or Losenno or Adams in view of Bisping teach all the essential elements of the claimed invention however fail to teach what thickness the sheet metal material of the clip member is. It would have been obvious to one of ordinary skill in the art to use sheet metal that is less than 1/8 or 1/16 of an inch thick, since differences in thickness will not support the patentability of subject matter

Art Unit: 1744

encompassed by the prior art unless there is evidence indicating such thickness is critical. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Losenno in view of Kendrena or Adams in view of Bisping.

Losenno in view of Kendrena or Adams in view of Bisping teach all the essential elements of the claimed invention however fail to teach what thickness the sheet metal material of the clip member is. It would have been obvious to one of ordinary skill in the art to use sheet metal that is less than 1/8 of an inch thick, since differences thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thickness is critical. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Losenno in view of Kendrena or Adams in view of Bisping as applied to claim 13 above.

Losenno in view of Kendrena or Adams in view of Bisping teaches all the essential elements of the claimed invention however fails to teach that the clip members are spot welded to the screws. Losenno in view of Kendrena or Adams in view of Bisping teaches that the clips and screws are separate elements. It would have been obvious at the time the invention was made to spot weld the clips to the

Art Unit: 1744

screws since making elements integral is a modification that has been considered to be within the level of ordinary skill in the art to follow. *In re Larson*. 144 USPQ 347, 349.

Allowable Subject Matter

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-17 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 9 includes the limitation of a spear at one end and a protruded truncated pyramid portion on the wall member at the position where the clip member is attached to the main body. None of the references teach these limitations nor would it have been obvious to modify the clips of the prior art to have a spear at one end since there is no teaching for doing so.

Claim 16 includes the limitations for cleaning a grill rack using substantially cylindrical clips. Pressure is applied to the clips to force the clip members against the metal rods of the grill rack, which causes the metal rods to insert into the cylindrical interior of the clip members. None of grill cleaners teach using a plurality of substantially cylindrical clips, which with force fit over the grill rods.

Response to Arguments

Applicant's arguments filed 2/10/06 have been fully considered but they are not persuasive.

Applicant's argues that Losenno's clip is not "substantially cylindrical". This is incorrect because the terminology "substantially cylindrical" only requires the element to be greater than

Art Unit: 1744

50% cylindrical. The clips of Losenno are clearly more than 50% cylindrical as shown in figure 3, since the left and right sides of the clip are arcuate and the back portion of the clip (which connected to the holder) connects the left and right sides. Therefore, the combination of the left, right and back portions creates a substantially cylindrical element.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the clip would only have contact with two sides of the grill rod and that the top section of the grill could not be scraped or cleaned by Losenno's clip) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant would need to explicitly claim that the clip, when on the grill rod, contacts both sides and the top portion of the grill rod.

Applicant argues that Bartleman failed to teach a "thin and elastically deflectable wall member". Column 2, lines 3-9 and lines 31-33, Bartleman teaches that the clips have tool-engaging arms, which are made from a resilient metal. This resilient metal is the "thin and elastically deflectable wall member".

Additionally, the applicant states that the "tool holder" in Bartleman is only loosely placed into a slot of a "rack bar" rather than securely attached. The examiner is requesting that the applicant point out in Bartleman's specification where it says the clips are "loosely placed" into a slot. It does not appear that this is in the specification and the applicant is just assuming that they are loosely placed in the slots. However, given the fact that there are four members (7, 13, 14 and 16) holding the clip in the slot, it can be asserted that the clips are securely held in

Art Unit: 1744

place. Applicant argues that if the rack bar were made to slide back and forth on a grill rack, the tool holders would separate from the bar. In response, it is noted that the features upon which applicant relies (i.e., the clip would separate from the bar if slide back and forth) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, if the bar were pushed, the clip elements would not separate from the bar since they would be pushed in toward the bar further.

Applicant's argues that Bisping's clip is not "substantially cylindrical" and would not clean the top section of a grill rod. This is incorrect because the terminology "substantially cylindrical" only requires the element to be greater than 50% cylindrical. The clips of Bisping are clearly more than 50% cylindrical as shown in figure 2, since the left and right sides of the clip are arcuate and account for more than 50% of the cylinder by themselves. Clearly shown are the gaps located between the arcuate arms (at the top and bottom of the clip member). These gaps clearly account for less 50% of the cylinder and therefore, the arcuate sides, when combined are more than 50% cylindrical.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the clip not clean the top section of a grill rod) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant would need to explicitly claim that the clip, when on the grill rod, contacts both sides and the top portion of the grill rod.

Art Unit: 1744

With regards to the argument for claim 14, making elements integral or separate does not constitute patentable subject matter. It is known to use spot welding to connect separate elements together. Therefore, spot welding is not a new technique in the art and is considered to be within the realms of one of ordinary skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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3/25/06



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